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UNITED STATES DISTRICT COURT

**NORTHERN DISTRICT OF CALIFORNIA**

## SAN JOSE DIVISION

11 NORTHSTAR FINANCIAL ADVISORS,  
12 INC., on Behalf of Itself and All Others  
Similarly Situated,

Case No. 08-cv-04119-LHK

## CLASS ACTION

13 Plaintiff,

**ANSWER TO FOURTH AMENDED  
CLASS ACTION COMPLAINT**

14

**JURY TRIAL DEMANDED**

15 SCHWAB INVESTMENTS; MARIANN  
16 BYERWALTER, DONALD F.  
17 DORWARD, WILLIAM A. HASLER,  
18 ROBERT G. HOLMES, GERALD B.  
19 SMITH, DONALD R. STEPHENS,  
20 MICHAEL W. WILSEY, CHARLES R.  
SCHWAB, RANDALL W. MERK,  
JOSEPH H. WENDER and JOHN F.  
COGAN, as TRUSTEES OF SCHWAB  
INVESTMENTS; and CHARLES  
SCHWAB INVESTMENT  
MANAGEMENT, INC.,

## Defendants.

1 Defendants Charles Schwab Investment Management, Inc., Mariann Byerwalter, Donald  
2 Dorward, William Hasler, Robert Holmes, Gerald Smith, Donald Stephens, Michael Wilsey,  
3 Charles Schwab, Randall Merk, Joseph Wender, and John Cogan (“Defendants”)<sup>1</sup> submit their  
4 answer to the Fourth Amended Class Action Complaint (“FAC”), filed June 25, 2015, as  
5 follows<sup>2</sup>:

## ANSWER

7       1. Defendants admit that the ticker for the Schwab Total Bond Market Fund is  
8 "SWLBX." The remainder of this Paragraph contains conclusions of law and not factual  
9 statements for which any response is required. To the extent that any further response is required,  
10 the allegations in this Paragraph are denied.

11        2. Defendants admit that Plaintiff purports to bring suit against the identified parties  
12 in this Paragraph. The allegations in Paragraph 2 are characterizations of the FAC and otherwise  
13 contain conclusions of law and not factual statements for which any response is required. To the  
14 extent that any further response is required, the remaining allegations in this Paragraph are  
15 denied.

16 || 3. Defendants admit the allegations of this Paragraph.

17           4. Defendants admit that the ticker for the Lehman Brothers U.S. Aggregate Bond  
18 Index is LBUSTRUU. Defendants admit that the Fund's fundamental investment objectives  
19 could only be changed by shareholder vote. Except as otherwise admitted, Defendants deny the  
20 allegation in this Paragraph.

21 || 5. Defendants deny the allegations in this Paragraph.

22        6. Defendants admit that the Fund was prohibited from investing 25% or more of the  
23 value of its total assets in any industry, as defined pursuant federal law and SEC regulations.

<sup>1</sup> Although Schwab Investments is also named as a defendant in the FAC, this Court dismissed all pending claims against it with prejudice. *See* October 5, 2015 Order [D.E. 229] at 15-18, 23, 41.

27       <sup>2</sup> In addition to the allegations included in the numbered paragraphs of the FAC, Defendants  
28       deny all other allegations in the FAC on the grounds that they do not have sufficient  
     knowledge to form an opinion as to the truth of the allegations.

1 Defendants otherwise deny the allegations in this Paragraph.

2       7. Defendants deny the allegations in this Paragraph.

3       8. Defendants assert that Judge Illston's February 19, 2009, opinion is a matter of  
4 public record and speaks for itself; the Court is referred to that document for a complete and  
5 accurate statement of its contents. To the extent that any further response is required, the  
6 allegations in this Paragraph are denied.

7       9. Defendants admit that the Fund seeks to track the performance of the Lehman  
8 Index. Except as otherwise admitted, Defendants deny the allegations in this Paragraph.

9       10. Defendants admit that the Fund's performance since February 27, 2009, has  
10 substantially tracked the performance of the Index. The remainder of this Paragraph contains  
11 conclusions of law and not factual statements for which any response is required. To the extent  
12 that any further response is required, the remaining allegations in this Paragraph are denied.

13       11. Defendants deny the allegation that the Fund deviated from its investment  
14 guidelines. The remainder of this Paragraph contains conclusions of law and not factual  
15 statements for which any response is required. To the extent that any further response is required,  
16 the remaining allegations in this Paragraph are denied.

17       12. Defendants admit that Plaintiff amended the Second Amended Complaint. The  
18 remainder of this Paragraph contains conclusions of law and not factual statements for which any  
19 response is required. To the extent that any further response is required, the allegations in this  
20 Paragraph are denied.

21       13. This Paragraph (including its subparts (a) through (n)) does not contain factual  
22 statements for which any response is required. To the extent that any further response is required,  
23 the remaining allegations in this Paragraph are denied.

24       14. Defendants deny the allegations in this Paragraph. *See* October 5, 2015 Order  
25 [D.E. 229].

26       15. Defendants deny the allegations in this Paragraph. *See* October 5, 2015 Order  
27 [D.E. 229].

28       16. This Paragraph contains conclusions of law and not factual statements for which

1 any response is required. To the extent that any further response is required, the allegations in  
 2 this Paragraph are denied.

3       17. This Paragraph contains conclusions of law and not statements of fact for which  
 4 any response is required. To the extent that any further response is required, the allegations in  
 5 this Paragraph are denied. To the extent this Paragraph purports to quote from the Schwab  
 6 Investments' Agreement and Declaration of Trust, the Court is referred to that document for a full  
 7 and complete statement of its contents.

8       18. This Paragraph contains conclusions of law and not factual statements for which  
 9 any response is required. To the extent that any further response is required, the allegations in  
 10 this Paragraph are denied.

11       19. This Paragraph contains conclusions of law and not factual statements for which  
 12 any response is required. To the extent that any further response is required, the allegations in  
 13 this Paragraph are denied.

14       20. This Paragraph contains conclusions of law and not factual statements for which  
 15 any response is required. To the extent that any further response is required, the allegations in  
 16 this Paragraph are denied.

17       21. This Paragraph contains conclusions of law and not factual statements for which  
 18 any response is required. To the extent that any further response is required, the allegations in  
 19 this Paragraph are denied.

20       22. This Paragraph contains conclusions of law and not factual statements for which  
 21 any response is required. To the extent that any further response is required, the allegations in  
 22 this Paragraph are denied.

23       23. Defendants lack sufficient knowledge to form an opinion as to the truth of the  
 24 allegations in this Paragraph. To the extent that any further response is required, the allegations  
 25 in this Paragraph are denied.

26       24. Defendants lack sufficient knowledge to form an opinion as to the truth of the  
 27 allegations in this Paragraph. To the extent that any further response is required, the allegations  
 28 in this Paragraph are denied.

1        25. Defendants lack sufficient knowledge to form an opinion as to the truth of the  
 2 allegations in this Paragraph. To the extent that any further response is required, the allegations  
 3 in this Paragraph are denied.

4        26. Defendants admit that Northstar has purchased and sold securities as an  
 5 independent investment advisor through Charles Schwab's institutional platform. Defendants  
 6 lack sufficient knowledge to form an opinion as to the truth of the remaining allegations in this  
 7 Paragraph. To the extent that any further response is required, the remaining allegations in this  
 8 Paragraph are denied.

9        27. Defendants lack sufficient knowledge to form an opinion as to the truth of the  
 10 allegations in this Paragraph. To the extent that any further response is required, the allegations  
 11 in this Paragraph are denied.

12        28. Defendants lack sufficient knowledge to form an opinion as to the truth of the  
 13 allegations in this Paragraph. To the extent that any further response is required, the allegations  
 14 in this Paragraph are denied.

15        29. Defendants admit that this Paragraph correctly states the amount of shares that  
 16 Henry Holz purchased in the Fund. Defendants lack sufficient knowledge to form an opinion as  
 17 to the truth of the remaining allegations in this Paragraph. To the extent that any further response  
 18 is required, the remaining allegations in this Paragraph are denied.

19        30. Defendants admit that Schwab Investments is a registered investment company  
 20 under the Investment Company Act of 1940, is organized under Massachusetts law, consists of a  
 21 series of 94 funds, and is the sponsor of the Fund. Except as otherwise admitted, Defendants  
 22 deny the allegations in this Paragraph.

23        31. Defendants admit that the Charles Schwab Corporation is a publicly owned  
 24 corporation. The remainder of this Paragraph contains conclusions of law and not factual  
 25 statements for which any response is required. To the extent that any further response is required,  
 26 the allegations in this Paragraph are denied.

27        32. Defendants admit that the Fund is a series of Schwab Investments and the Fund is  
 28 managed by Charles Schwab Investment Management, Inc. ("CSIM"). Except as otherwise

1 admitted, Defendants deny the allegations in this Paragraph.

2       33. Defendants admit that the Trust is an unincorporated business organization created  
 3 by an instrument of trust. The Court is referred to that document for a complete and accurate  
 4 statement of its contents. The remaining allegations in this Paragraph contain conclusions of law  
 5 and not factual statements for which a response is required. To the extent that any further  
 6 response is required, the remaining allegations in this Paragraph are denied.

7       34. Defendants admit the allegations of this Paragraph.

8       35. This Paragraph contains conclusions of law and not factual statements for which  
 9 any response is required. To the extent that any further response is required, the allegations in  
 10 this Paragraph are denied.

11      36. Defendants admit the allegations of this Paragraph.

12      37. Defendants admit that Schwab Investments, at times, uses the term "Schwab" in its  
 13 marketing materials. Except as otherwise admitted, the allegations in this Paragraph are denied.

14      38. Defendants admit the allegations of this Paragraph.

15      39. Defendants assert that the Proxy Statement dated May 13, 2010, speaks for itself,  
 16 and the Court is referred to that document for a complete and accurate statement of its contents.  
 17 To the extent that any further response is required, the allegations in this Paragraph are denied.

18      40. Defendants assert that the Proxy Statement dated May 13, 2010, speaks for itself,  
 19 and the Court is referred to that document for a complete and accurate statement of its contents.

20 Defendants admit that Charles Schwab is the Chairman and a trustee of the Charles Schwab  
 21 Family of Funds and Schwab Investments. To the extent that any further response is required, the  
 22 remaining allegations in this Paragraph are denied.

23      41. This Paragraph contains conclusions of law and not factual statements for which  
 24 any response is required. To the extent that any further response is required, the allegations in  
 25 this Paragraph are denied.

26      42. Defendants admit that the Trust is managed by a Board of Trustees that manages  
 27 and holds Trust property for the benefit of the shareholders. To the extent this Paragraph quotes  
 28 from a November 15, 2005, Statement of Additional Information, as amended December 9, 2005,

1 that document speaks for itself, and the Court is referred to that document for a complete and  
 2 accurate statement of its contents. The remainder of this Paragraph contains legal conclusions  
 3 and not factual statements for which any response is required. To the extent that any further  
 4 response is required, the remaining allegations in this Paragraph are denied.

5       43. Defendants admit that the Trustees serve with respect to multiple Schwab Funds.  
 6 To the extent this Paragraph relies upon the Fund's Prospectus dated November 15, 2007, that  
 7 document speaks for itself and the Court is referred to that document for a complete and accurate  
 8 statement of its contents. To the extent that any further response is required, the remaining  
 9 allegations in this Paragraph are denied.

10       44. Defendants admit the years of service, number of portfolios overseen, and annual  
 11 compensation listed in this Paragraph for each Trustee as of August 31, 2007. Except as  
 12 otherwise admitted, the remaining allegations in this Paragraph are denied.

13       45. Defendants admit that Joseph H. Wender and John F. Cogan replaced Robert G.  
 14 Holmes and Donald F. Dorward as Trustees in 2008. To the extent this Paragraph relies upon the  
 15 Fund's Amended Prospectus dated June 13, 2008, that document speaks for itself and the Court is  
 16 referred to that document for a complete and accurate statement of its contents. The remainder of  
 17 this Paragraph contains defined terms for the FAC and not factual statements for which any  
 18 response is required. To the extent that any further response is required, the remaining allegations  
 19 in this Paragraph are denied.

20       46. Defendants deny the allegations of this Paragraph.

21       47. Defendants admit that the Trustees were first added as defendants in Plaintiff's  
 22 Second Amended Complaint dated September 28, 2010. The remainder of this Paragraph  
 23 contains conclusions of law and not factual statements for which any response is required. To the  
 24 extent that any further response is required, the allegations in this Paragraph are denied.

25       48. Defendants admit that neither the Fund's shareholders nor the shareholders in any  
 26 other series of Schwab Investments are required to vote on appointment of the Trustees. Except  
 27 as otherwise admitted, the allegations in this Paragraph are denied.

28       49. Defendants admit that Charles Schwab and Randall Merk are not independent

1 trustees pursuant to federal law and regulations and, therefore, they are not compensated by the  
 2 Fund. Except as otherwise admitted, the allegations in this Paragraph are denied.

3       50. Defendants admit that Schwab Investments has entered into an Investment  
 4 Advisory Agreement (“IAA”) with CSIM to provide certain management and advisory services to  
 5 it. The Court is referred to the IAA for a complete and accurate statement of its contents. Except  
 6 as otherwise admitted, the allegations in this Paragraph are denied.

7       51. Defendants admit that CSIM provides investment advisory and management  
 8 services to the Fund pursuant to the IAA, which the Court is referred to for a complete and  
 9 accurate statement of its contents. Defendants admit that CSIM is paid a fee by the Fund for  
 10 these services. Defendants admit that CSIM is a wholly owned subsidiary of The Charles  
 11 Schwab Corporation. Except as otherwise admitted, the allegations in this Paragraph are denied.

12       52. Defendants admit that CSIM provides investment advisory and management  
 13 services to all funds that comprise Schwab Investments. Except as otherwise admitted, the  
 14 allegations in this Paragraph are denied.

15       53. Defendants deny the allegations in this Paragraph. To the extent this Paragraph  
 16 quotes from certain documents, the Court is referred to those documents for a complete and  
 17 accurate statement of their contents.

18       54. Defendants assert that Schwab Investments’ Definitive Proxy Statement dated  
 19 March 24, 2000, speaks for itself, and the Court is referred to that document for a complete and  
 20 accurate statement of its contents. The remainder of this Paragraph contains legal conclusions  
 21 and not factual statements for which any response is required. To the extent that any further  
 22 response is required, the allegations in this Paragraph are denied.

23       55. Defendants assert that the letter referred to in this Paragraph speaks for itself, and  
 24 the Court is referred to that document for a complete and accurate statement of its contents. The  
 25 remainder of this Paragraph contains conclusions of law and not factual statements for which any  
 26 response is required. To the extent that any further response is required, the allegations in this  
 27 Paragraph are denied.

28       56. Defendants assert that the August 31, 2007, Annual Report speaks for itself and

1 the Court is referred to that document for a complete and accurate statement of its contents. The  
 2 remainder of this Paragraph contains conclusions of law and not factual statements for which any  
 3 response is required. To the extent that any further response is required, the allegations in this  
 4 Paragraph are denied.

5 57. This Paragraph contains conclusions of law and not factual statements for which  
 6 any response is required. To the extent that any further response is required, the allegations in  
 7 this Paragraph are denied.

8 58. Defendants assert that the Funds' prospectuses speak for themselves and the Court  
 9 is referred to those documents for a complete and accurate statement of their contents. To the  
 10 extent that any further response is required, the remaining allegations in this Paragraph are  
 11 denied.

12 59. Defendants deny the allegations in this Paragraph. To the extent this Paragraph  
 13 relies upon or quotes from certain documents, those documents speak for themselves and the  
 14 Court if referred to them for a complete and accurate statement of their contents.

15 60. This Paragraph contains conclusions of law and not factual statements for which  
 16 any response is required. To the extent that any further response is required, the allegations in  
 17 this Paragraph are denied.

18 61. This Paragraph contains conclusions of law and not factual statements for which  
 19 any response is required. To the extent that any further response is required, the allegations in  
 20 this Paragraph are denied.

21 62. Defendants deny the allegations in this Paragraph. To the extent this Paragraph  
 22 quotes from the "Charles Schwab" website and an article by Mark Riepe, those documents speak  
 23 for themselves and the Court is referred to those documents for a complete and accurate statement  
 24 of their contents. To the extent that any further response is required, the remaining allegations in  
 25 this Paragraph are denied.

26 63. Defendants admit that the Trustees review the performance and fees of CSIM on  
 27 an annual basis and have never selected an entity other than CSIM to serve as an investment  
 28 manager. Except as otherwise admitted, the remaining allegations in this Paragraph are denied.

1       64. Defendants admit that the SEC filed an action against CSIM on January 11, 2011,  
 2 regarding an unrelated short-term bond fund that was also managed by it, the YieldPlus Fund.  
 3 Defendants further admit this action was settled without an admission of liability for more than  
 4 \$118 million. To the extent this Paragraph relies upon the Litigation Release No. 21806, filed in  
 5 that action, that document speaks for itself and the Court is referred to that document for a  
 6 complete and accurate statement of its contents. To the extent that any further response is  
 7 required to this Paragraph, the remaining allegations are denied.

8       65. Defendants admit that the SEC filed an action against Randall Merk and Kimon  
 9 Daifotis on January 11, 2011. Defendants lack any knowledge of any charges filed against any  
 10 individual named “Damon Daifotis” and deny that such an individual held the positions listed in  
 11 this Paragraph. To the extent this Paragraph relies upon the complaint filed by the SEC against  
 12 Messrs. Merk and Daifotis, the document speaks for itself and the Court is referred to that  
 13 document for a complete and accurate statement of its contents. Defendants deny that the  
 14 complaint contains accurate statements of fact. Except as otherwise admitted, the remaining  
 15 allegations in this Paragraph are denied.

16       66. Defendants admit that the Trustees did not terminate the IAA or seek additional  
 17 compensation from CSIM. Except as otherwise admitted, the allegations in this Paragraph are  
 18 denied.

19       67. To the extent this Paragraph relies upon this Court’s March 2, 2011, Order and the  
 20 Reply Memorandum, those documents speak for themselves and the Court is referred to those  
 21 documents for a complete and accurate statement of their contents. To the extent that any further  
 22 response is required, the allegations in this Paragraph are denied.

23       68. This Paragraph contains conclusions of law and not factual statements for which  
 24 any response is required. To the extent that any further response is required, the allegations in  
 25 this Paragraph are denied.

26       69. Defendants deny the allegations of this Paragraph.

27       70. Defendants deny the allegations in this Paragraph. *See* October 5, 2015 Order  
 28 [D.E. 229].

1       71. This Paragraph contains descriptions of the FAC and not statements of fact for  
 2 which a response is required. To the extent that any further response is required, the allegations  
 3 in this Paragraph are denied.

4       72. Defendants deny the allegations in this Paragraph. *See* October 5, 2015 Order  
 5 [D.E. 229].

6       73. Defendants admit that the Fund had over \$1.5 billion in assets and approximately  
 7 150 million shares outstanding as of August 31, 2007. The remainder of this Paragraph contains  
 8 conclusions of law and not factual statements for which any response is required. To the extent  
 9 that any further response is required, the allegations in this Paragraph are denied.

10       74. This Paragraph contains conclusions of law and not factual statements for which  
 11 any response is required. To the extent that any further response is required, the allegations in  
 12 this Paragraph are denied.

13       75. This Paragraph contains conclusions of law and not factual statements for which  
 14 any response is required. To the extent that any further response is required, the allegations in  
 15 this Paragraph are denied.

16       76. This Paragraph (including its sub-paragraphs) contain conclusions of law and not  
 17 factual statements for which any response is required. To the extent that any further response is  
 18 required, the allegations in this Paragraph are denied.

19       77. This Paragraph contains conclusions of law and not factual statements for which  
 20 any response is required. To the extent that any further response is required, the allegations in  
 21 this Paragraph are denied.

22       78. Defendants admit the allegations in this Paragraph.

23       79. Defendants admit that, prior to 1997, the investment objective of the Schwab  
 24 Long-Term Government Bond Fund was to provide a high level of current income consistent with  
 25 preservation of capital by investing primarily in securities issued by the United States  
 26 Government, its agencies or instrumentalities and repurchase agreements covering those  
 27 securities. To the extent this Paragraph purports to quote from an unidentified document,  
 28 Defendants refer the Court to that document for a complete and accurate statement of its contents.

1       80. Defendants admit that a fundamental investment objective cannot be changed  
 2 without a shareholder vote. Except as otherwise admitted, the allegations in this Paragraph are  
 3 denied. To the extent this Paragraph quotes from unidentified documents, the Court is referred to  
 4 those documents for a complete and accurate statement of their contents.

5       81. Defendants deny the allegations in this Paragraph.

6       82. Defendants admit that the Government Bond Fund had \$24.8 million in investment  
 7 assets as of August 31, 1997. Except as otherwise admitted, the allegations in this Paragraph are  
 8 denied.

9       83. Defendants admit the allegations in this Paragraph.

10       84. Defendants admit that shareholder approval was sought in 1997 to change the  
 11 investment objective of the Fund to attempt to provide a high level of current income consistent  
 12 with preservation of capital by seeking to track the investment results of a particular bond index.  
 13 Defendants admit that the bond index the Fund sought to track was the Lehman Brothers [U.S.]  
 14 Aggregate Bond Index. To the extent this Paragraph attempts to characterize the 1997 Proxy  
 15 Statement, that document speaks for itself and the Court is referred to that document for a  
 16 complete and accurate statement of its contents. Except as otherwise admitted, the allegations in  
 17 this Paragraph are denied.

18       85. Defendants admit that the Fund's investment objective can only be changed with  
 19 shareholder approval. To the extent this Paragraph relies upon the 1997 Proxy Statement, that  
 20 document speaks for itself and the Court is referred to that document for a complete and accurate  
 21 statement of its contents.

22       86. Defendants admit that the Lehman Brothers [U.S.] Aggregate Bond Index is a  
 23 broad, market-weighted index that includes a variety of investment-grade securities, including  
 24 mortgage-backed securities. To the extent this Paragraph purports to quote from the 1997 Proxy  
 25 Statement, that document speaks for itself and the Court is referred to that documents for a  
 26 complete and accurate statement of its contents.

27       87. Defendants admit the allegations in this Paragraph.

28       88. To the extent this Paragraph purports to quote from the 1997 Proxy Statement, that

1 document speaks for itself and the Court is referred to that document for a complete and accurate  
 2 statement of its contents. The allegations in this Paragraph are otherwise denied.

3       89. To the extent this Paragraph purports to quote from the 1997 Proxy Statement, that  
 4 document speaks for itself and the Court is referred to that document for a complete and accurate  
 5 statement of its contents. The allegations in this Paragraph are otherwise denied.

6       90. Defendants admit that the 1997 Proxy Statement's Proposal No. 3 included the  
 7 language "eliminate, reclassify or amend each Fund's fundamental investment restrictions." To  
 8 the extent this Paragraph purports to quote from the 1997 Proxy Statement, that document speaks  
 9 for itself and the Court is referred to that document for a complete and accurate statement of its  
 10 contents. The allegations in this Paragraph are otherwise denied.

11       91. To the extent this Paragraph purports to quote from the 1997 Proxy Statement, that  
 12 document speaks for itself and the Court is referred to that document for a complete and accurate  
 13 statement of its contents. The allegations in this Paragraph are otherwise denied.

14       92. Defendants admit that the 1997 Proxy Statement's Proposal #3 proposed a change  
 15 in the definition of "concentration" that would permit the Fund to invest more than 25% of its  
 16 total assets in an industry in order to track the Lehman Index. To the extent this Paragraph  
 17 purports to quote from the 1997 Proxy Statement, that document speaks for itself and the Court is  
 18 referred to that document for a complete and accurate statement of its contents. Except as  
 19 otherwise admitted, the allegations in this Paragraph are denied.

20       93. Defendants admit that the reason for the change in the concentration policy  
 21 proposed in 1997 was to provide the Fund with greater flexibility in managing its assets. To the  
 22 extent this Paragraph purports to quote from the 1997 Proxy Statement, that document speaks for  
 23 itself and the Court is referred to that document for a complete and accurate statement of its  
 24 contents. Except as otherwise admitted, the allegations in this Paragraph are denied.

25       94. The allegations in this Paragraph contain legal conclusions and not factual  
 26 statement to which a response is required. To the extent that any further response is required, the  
 27 allegations in this Paragraph are denied.

28       95. Defendants admit that the proposals in the 1997 Proxy Statement were approved

1 by the Fund's shareholders. To the extent this Paragraph purports to quote from a Prospectus  
 2 Supplement, that document speaks for itself and the Court is referred to that document for a  
 3 complete and accurate statement of its contents. Except as otherwise admitted, the allegations in  
 4 this Paragraph are denied.

5       96. To the extent this Paragraph purports to quote from a Prospectus Supplement, that  
 6 document speaks for itself and the Court is referred to that document for a complete and accurate  
 7 statement of its contents. Except as otherwise admitted, the allegations in this Paragraph are  
 8 denied.

9       97. The allegations in this Paragraph contain conclusions of law and not factual  
 10 statements to which a response is required. To the extent a further response is required, the  
 11 allegations in this Paragraph are denied. To the extent this Paragraph relies upon the 1997 Proxy  
 12 Statement, that document speaks for itself and the Court is referred to that document for a  
 13 complete and accurate statement of its contents.

14       98. The allegations in this Paragraph state conclusions of law and not factual  
 15 statements to which a response is required. To the extent that any further response is required, the  
 16 allegations in this Paragraph are denied.

17       99. The allegations in this Paragraph contain conclusions of law and not factual  
 18 statements to which a response is required. To the extent that any further response is required, the  
 19 remaining allegations in this Paragraph are denied. To the extent this Paragraph purports to quote  
 20 certain unidentified documents, those documents speak for themselves and the Court is referred to  
 21 those documents for a complete and accurate statement of their contents.

22       100. This Paragraph contains conclusions of law and not factual statements for which  
 23 any response is required. To the extent that any further response is required, the allegations in  
 24 this Paragraph are denied.

25       101. Defendants admit that the Fund disclosed its investments in government agency  
 26 and non-agency mortgage-backed securities. Defendants admit that the government agencies that  
 27 issue mortgage-backed securities are the Governmental National Mortgage Association (referred  
 28 to as Ginnie Mae), the Federal National Mortgage Association (referred to as Fannie Mae), and

1 the Federal Home Loan Mortgage Association (referred to as Freddie Mac). Defendants admit  
 2 that these agencies are sometimes described as Government Sponsored Enterprises or GSEs.  
 3 Except as otherwise admitted, Defendants lack sufficient information to form an opinion as to the  
 4 truth of the remaining allegations in this Paragraph, and therefore deny the remainder of the  
 5 allegations.

6 102. Defendants lack sufficient knowledge to form an opinion as to the truth of the  
 7 allegations in this Paragraph, and therefore deny the allegations.

8 103. Defendants admit that the Fund disclosed its investments in government agency  
 9 mortgage-backed securities. Except as otherwise admitted, Defendants lack sufficient knowledge  
 10 to form an opinion as to the truth of the remaining allegations in this Paragraph, and therefore  
 11 denies the remainder of the allegations. To the extent this Paragraph relies upon the 1997 Proxy  
 12 Statement, that document speaks for itself and the Court is referred to that document for a  
 13 complete and accurate statement of its contents.

14 104. Defendants lack sufficient knowledge to form an opinion as to the truth of the  
 15 allegations in this Paragraph, and therefore deny the allegations.

16 105. Defendants lack sufficient knowledge to form an opinion as to the truth of the  
 17 allegations in this Paragraph, and therefore deny the allegations.

18 106. Defendants lack sufficient knowledge to form an opinion as to the truth of the  
 19 allegations in this Paragraph, and therefore deny the allegations.

20 107. Defendants lack sufficient knowledge to form an opinion as to the truth of the  
 21 allegations in this Paragraph, and therefore deny the allegations.

22 108. Defendants admit that the Fund performed in a manner that was consistent with the  
 23 Lehman Index from August 31, 1997, through August 31, 2007. Defendants further assert that  
 24 the rates of return for both the Fund and the Index are a matter of public record and speak for  
 25 themselves. Except as otherwise admitted, the allegations in this Paragraph are denied.

26 109. Defendants admit that the Fund's assets grew from approximately \$24 million as  
 27 of August 31, 1997, to approximately \$1.5 billion as of August 31, 2007. Except as otherwise  
 28 admitted, the allegations in this Paragraph are denied.

1           110. Defendants admit that 37% of the Fund's total assets were invested in CMOs on  
 2 August 31, 2007. Defendants deny the remaining allegations in this Paragraph.

3           111. Defendants admit that the Fund underperformed the Lehman Index at various  
 4 times. The relative performances of the Fund and the Index between August 31, 2007, and  
 5 February 27, 2009, are a matter of public record and speak for themselves. Except as otherwise  
 6 admitted, the allegations in this Paragraph are denied.

7           112. Defendants admit that the Fund invested in non-agency collateralized mortgage  
 8 obligations ("CMOs") and disclosed those investments. Defendants admit that non-agency  
 9 CMOs are not necessarily subject to the same underwriting requirements as securities issued by  
 10 Ginnie Mae, Fannie Mae, and/or Freddie Mac. Except as otherwise admitted, the allegations in  
 11 this Paragraph are denied.

12           113. Defendants admit that CMOs in which the Fund invested were sponsored by  
 13 numerous parties, including Citigroup, Merrill Lynch, Countrywide, Bear Stearns, IndyBank,  
 14 Lehman Brothers, and Washington Mutual. Except as otherwise admitted, the allegations in this  
 15 Paragraph are denied.

16           114. This Paragraph contains conclusions of law and not factual statements for which  
 17 any response is required. To the extent that any further response is required, the allegations in  
 18 this Paragraph are denied.

19           115. Defendants deny the allegations in this Paragraph.

20           116. Defendants admit that 37% of the Fund's total assets were invested in CMOs on  
 21 August 31, 2007. Defendants otherwise lack sufficient knowledge to form an opinion as to the  
 22 truth of the remaining allegations in this Paragraph because it does not identify the other  
 23 purported "analyses" to which it refers, and therefore denies those allegations.

24           117. Defendants lack sufficient knowledge to form an opinion as to the truth of the  
 25 percentage included in this Paragraph, and therefore deny the allegations. The remaining  
 26 allegations in this Paragraph are denied.

27           118. Defendants lack sufficient knowledge to form an opinion as to the truth of the  
 28 allegations in this Paragraph, and therefore deny the allegations.

1        119. Defendants lack sufficient knowledge to form an opinion as to the truth of the  
2 allegations in this Paragraph, and therefore deny the allegations. To the extent this Paragraph  
3 relies upon a joint Statement on Subprime Mortgage Lending, that document speaks for itself and  
4 the Court is referred to that document for a complete and accurate statement of its contents.

5 120. Defendants deny the allegations in this Paragraph.

6        121. Defendants lack sufficient knowledge to form an opinion as to the truth of the  
7 allegations in this Paragraph, and therefore deny the allegations. To the extent this Paragraph  
8 purports to rely on a Bloomberg terminal chart, that chart speaks for itself and the Court is  
9 referred to it for a complete and accurate depiction of its contents.

10 ||| 122. Defendants deny the allegations in this Paragraph.

11           123. Defendants admit that the Fund's performance has substantially tracked the  
12 Lehman Index since at least February 27, 2009. Except as otherwise admitted, the allegations in  
13 this Paragraph are denied.

## **FIRST CLAIM FOR RELIEF**

15        124. Defendants repeat and incorporate by reference their responses to the foregoing  
16 paragraphs herein. Further, this Court's Order dated October 5, 2015, dismissed this claim for  
17 relief with prejudice to the extent it has been asserted against the Trust.

18        125. This Paragraph contains conclusions of law and not factual statements for which  
19 any response is required. To the extent that any further response is required, the allegations in  
20 this Paragraph are denied. Further, this Court's Order dated October 5, 2015, dismissed this  
21 claim for relief with prejudice to the extent it has been asserted against the Trust.

22       126. This Paragraph contains conclusions of law and not factual statements for which  
23 any response is required. To the extent that any further response is required, the allegations in  
24 this Paragraph are denied. Further, this Court's Order dated October 5, 2015, dismissed this  
25 claim for relief with prejudice to the extent it has been asserted against the Trust.

26       127. Defendants admit that the Schwab Trustees were trustees of Schwab Investments,  
27 which is a Massachusetts Business Trust. Defendants deny that Plaintiff was a beneficiary of that  
28 Trust. The remainder of this Paragraph contains conclusions of law and not factual statements for

1 which any response is required. To the extent that any further response is required, the  
 2 allegations in this Paragraph are denied. To the extent this Paragraph purports to quote from a  
 3 March 24, 2000 Proxy Statement, that document speaks for itself and the Court is referred to that  
 4 document for a complete and accurate statement of its contents. Further, this Court's Order dated  
 5 October 5, 2015, dismissed this claim for relief with prejudice to the extent it has been asserted  
 6 against the Trust.

7       128. Defendants admit that Charles Schwab has served as a trustee of Schwab  
 8 Investments and is a shareholder of Schwab Corp. The remainder of this Paragraph contains  
 9 conclusions of law and not factual statements for which any response is required. To the extent  
 10 that any further response is required, the allegations in this Paragraph are denied. Further, this  
 11 Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice to the extent it  
 12 has been asserted against the Trust.

13       129. This Paragraph contains conclusions of law and not factual statements for which  
 14 any response is required. To the extent that any further response is required, Defendants lack  
 15 sufficient knowledge to form an opinion as to the truth of the allegations in this Paragraph, and  
 16 therefore deny the allegations. Further, this Court's Order dated October 5, 2015, dismissed this  
 17 claim for relief with prejudice to the extent it has been asserted against the Trust.

18       130. This Paragraph contains conclusions of law and not factual statements for which  
 19 any response is required. To the extent that any further response is required, the allegations in  
 20 this Paragraph are denied. Further, this Court's Order dated October 5, 2015, dismissed this  
 21 claim for relief with prejudice to the extent it has been asserted against the Trust.

22       131. Defendants deny the allegations in this Paragraph. Further, this Court's Order  
 23 dated October 5, 2015, dismissed this claim for relief with prejudice to the extent it has been  
 24 asserted against the Trust.

25       132. Defendants deny the allegations in this Paragraph. Further, this Court's Order  
 26 dated October 5, 2015, dismissed this claim for relief with prejudice to the extent it has been  
 27 asserted against the Trust.

28       133. Defendants deny the allegations in this Paragraph. Further, this Court's Order

1 dated October 5, 2015, dismissed this claim for relief with prejudice to the extent it has been  
2 asserted against the Trust.

3       134. Defendants deny the allegations in this Paragraph. Further, this Court's Order  
4 dated October 5, 2015, dismissed this claim for relief with prejudice to the extent it has been  
5 asserted against the Trust.

## **SECOND CLAIM FOR RELIEF**

7       135. Defendants repeat and incorporate by reference their responses to the foregoing  
8 paragraphs herein.

9       136. This Paragraph contains conclusions of law and not factual statements for which  
10 any response is required. To the extent that any further response is required, the allegations in  
11 this Paragraph are denied.

12        137. Defendants admit that the Advisor serves as the investment adviser and  
13 administrator of Schwab Investments. Defendants assert that the Investment Advisory and  
14 Administrative Agreement speaks for itself. The remaining allegations in this Paragraph do not  
15 contain factual statements for which any response is required. To the extent that any further  
16 response is required, the remaining allegations in this Paragraph are denied.

17        138. To the extent this Paragraph purports to quote from the IAA, it speaks for itself  
18 and the Court is referred to that document for a complete and accurate statement of its contents.  
19 The remaining allegations in this Paragraph do not contain factual statements for which any  
20 response is required. To the extent that any further response is required, the remaining allegations  
21 in this Paragraph are denied.

22        139. To the extent this Paragraph purports to quote from the IAA, it speaks for itself  
23 and the Court is referred to that document for a complete and accurate statement of its contents.  
24 The remaining allegations in this Paragraph are conclusions of law and not factual statements for  
25 which any response is required. To the extent that any further response is required, the remaining  
26 allegations in this Paragraph are denied.

27       140. This Paragraph contains conclusions of law and not factual statements for which  
28 any response is required. To the extent that any further response is required, Defendants lack

sufficient knowledge to form an opinion as to the truth of the allegations in this Paragraph, and therefore deny the allegations.

141. This Paragraph contains conclusions of law and not factual statements for which any response is required. To the extent that any further response is required, the allegations in this Paragraph are denied.

142. Defendants deny the allegations in this Paragraph.

143. Defendants deny the allegations in this Paragraph.

144. Defendants deny the allegations in this Paragraph.

145. Defendants deny the allegations in this Paragraph.

## THIRD CLAIM FOR RELIEF

146. Defendants repeat and incorporate by reference their responses to the foregoing paragraphs herein.

147. This Paragraph contains conclusions of law and not factual statements for which any response is required. To the extent that any further response is required, the allegations in this Paragraph are denied.

148. Defendants deny the allegations in this Paragraph.

149. Defendants deny the allegations in this Paragraph.

150. Defendants deny the allegations in this Paragraph.

151. Defendants deny the allegations in this Paragraph.

## **FOURTH CLAIM FOR RELIEF**

152. Defendants repeat and incorporate by reference their responses to the foregoing paragraphs herein.

153. This Paragraph contains conclusions of law and not factual statements for which any response is required. To the extent that any further response is required, the allegations in this Paragraph are denied.

154. Defendants deny the allegations in this Paragraph.

155. Defendants deny the allegations in this Paragraph.

156. Defendants deny the allegations in this Paragraph.

157. Defendants deny the allegations in this Paragraph.

## **FIFTH CLAIM FOR RELIEF**

158. Defendants repeat and incorporate by reference their responses to the foregoing paragraphs herein. Moreover, this Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice. Accordingly, no response is required. To the extent a response is required, the allegations in this Paragraph are denied.

159. This Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice. Accordingly, no response is required. To the extent a response is required, the allegations in this Paragraph are denied.

160. This Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice. Accordingly, no response is required. To the extent a response is required, the allegations in this Paragraph are denied.

161. This Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice. Accordingly, no response is required. To the extent a response is required, the allegations in this Paragraph are denied.

162. This Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice. Accordingly, no response is required. To the extent a response is required, the allegations in this Paragraph are denied.

163. This Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice. Accordingly, no response is required. To the extent a response is required, the allegations in this Paragraph are denied.

164. This Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice. Accordingly, no response is required. To the extent a response is required, the allegations in this Paragraph are denied.

165. This Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice. Accordingly, no response is required. To the extent a response is required, the allegations in this Paragraph are denied

<sup>166</sup> This Court's Order dated October 5, 2015, dismissed this claim for relief with

1 prejudice. Accordingly, no response is required. To the extent a response is required, the  
2 allegations in this Paragraph are denied.

3 167. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
4 prejudice. Accordingly, no response is required. To the extent a response is required, the  
5 allegations in this Paragraph are denied.

6 168. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
7 prejudice. Accordingly, no response is required. To the extent a response is required, the  
8 allegations in this Paragraph are denied.

9 169. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
10 prejudice. Accordingly, no response is required. To the extent a response is required, the  
11 allegations in this Paragraph are denied.

12 170. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
13 prejudice. Accordingly, no response is required. To the extent a response is required, the  
14 allegations in this Paragraph are denied.

15 171. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
16 prejudice. Accordingly, no response is required. To the extent a response is required, the  
17 allegations in this Paragraph are denied.

18 172. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
19 prejudice. Accordingly, no response is required. To the extent a response is required, the  
20 allegations in this Paragraph are denied.

21 173. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
22 prejudice. Accordingly, no response is required. To the extent a response is required, the  
23 allegations in this Paragraph are denied.

24 174. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
25 prejudice. Accordingly, no response is required. To the extent a response is required, the  
26 allegations in this Paragraph are denied.

27 175. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
28 prejudice. Accordingly, no response is required. To the extent a response is required, the

1 allegations in this Paragraph are denied.

2 176. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
 3 prejudice. Accordingly, no response is required. To the extent a response is required, the  
 4 allegations in this Paragraph are denied.

5 **SIXTH CLAIM FOR RELIEF**

6 177. Defendants repeat and incorporate by reference their responses to the foregoing  
 7 paragraphs herein. Moreover, this Court's Order dated October 5, 2015, dismissed this claim for  
 8 relief with prejudice. Accordingly, no response is required. To the extent a response is required, the  
 9 allegations in this Paragraph are denied.

10 178. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
 11 prejudice. Accordingly, no response is required. To the extent a response is required, the  
 12 allegations in this Paragraph are denied.

13 179. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
 14 prejudice. Accordingly, no response is required. To the extent a response is required, the  
 15 allegations in this Paragraph are denied.

16 180. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
 17 prejudice. Accordingly, no response is required. To the extent a response is required, the  
 18 allegations in this Paragraph are denied.

19 181. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
 20 prejudice. Accordingly, no response is required. To the extent a response is required, the  
 21 allegations in this Paragraph are denied.

22 182. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
 23 prejudice. Accordingly, no response is required. To the extent a response is required, the  
 24 allegations in this Paragraph are denied.

25 183. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
 26 prejudice. Accordingly, no response is required. To the extent a response is required, the  
 27 allegations in this Paragraph are denied.

28 184. This Court's Order dated October 5, 2015, dismissed this claim for relief with

1 prejudice. Accordingly, no response is required. To the extent a response is required, the  
2 allegations in this Paragraph are denied.

3 185. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
4 prejudice. Accordingly, no response is required. To the extent a response is required, the  
5 allegations in this Paragraph are denied.

6       186. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
7 prejudice. Accordingly, no response is required. To the extent a response is required, the  
8 allegations in this Paragraph are denied.

9       187. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
10      prejudice. Accordingly, no response is required. To the extent a response is required, the  
11      allegations in this Paragraph are denied.

12        188. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
13 prejudice. Accordingly, no response is required. To the extent a response is required, the  
14 allegations in this Paragraph are denied.

15        189. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
16 prejudice. Accordingly, no response is required. To the extent a response is required, the  
17 allegations in this Paragraph are denied.

## SEVENTH CLAIM FOR RELIEF

19       190. Defendants repeat and incorporate by reference their responses to the foregoing  
20 paragraphs herein. Moreover, this Court's Order dated October 5, 2015, dismissed this claim for  
21 relief with prejudice. Accordingly, no response is required. To the extent a response is required,  
22 the allegations in this Paragraph are denied.

23        191. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
24 prejudice. Accordingly, no response is required. To the extent a response is required, the  
25 allegations in this Paragraph are denied.

26           192. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
27 prejudice. Accordingly, no response is required. To the extent a response is required, the  
28 allegations in this Paragraph are denied.

193. This Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice. Accordingly, no response is required. To the extent a response is required, the allegations in this Paragraph are denied.

## **EIGHTH CLAIM FOR RELIEF**

194. Defendants repeat and incorporate by reference their responses to the foregoing paragraphs herein. Further, this Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice to the extent it has been asserted against the Trust.

195. This Paragraph contains conclusions of law and not factual statements for which any response is required. To the extent that any further response is required, the allegations in this Paragraph are denied. Further, this Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice to the extent it has been asserted against the Trust.

196. This Paragraph contains conclusions of law and not factual statements for which any response is required. To the extent that any further response is required, the allegations in this Paragraph are denied. Further, this Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice to the extent it has been asserted against the Trust.

197. Defendants admit that the Schwab Trustees were trustees of Schwab Investments, which is a Massachusetts Business Trust. Defendants deny that Plaintiff was a beneficiary of that Trust. The remainder of this Paragraph contains conclusions of law and not factual statements for which any response is required. To the extent that any further response is required, the allegations in this Paragraph are denied. To the extent this Paragraph purports to quote from a March 24, 2000 Proxy Statement, that document speaks for itself and the Court is referred to that document for a complete and accurate statement of its contents. Further, this Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice to the extent it has been asserted against the Trust.

198. Defendants admit that Charles Schwab has served as a trustee of Schwab Investments and is a shareholder of Schwab Corp. The remainder of this Paragraph contains conclusions of law and not factual statements for which any response is required. To the extent that any further response is required, the allegations in this Paragraph are denied. Further, this

1 Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice to the extent it  
2 has been asserted against the Trust.

3       199. This Paragraph contains conclusions of law and not factual statements for which  
4 any response is required. To the extent that any further response is required, Defendants lack  
5 sufficient knowledge to form an opinion as to the truth of the allegations in this Paragraph, and  
6 therefore deny the allegations. Further, this Court's Order dated October 5, 2015, dismissed this  
7 claim for relief with prejudice to the extent it has been asserted against the Trust.

8       200. This Paragraph contains conclusions of law and not factual statements for which  
9 any response is required. To the extent that any further response is required, the allegations in  
10 this Paragraph are denied. Further, this Court's Order dated October 5, 2015, dismissed this  
11 claim for relief with prejudice to the extent it has been asserted against the Trust.

12        201. Defendants deny the allegations in this Paragraph. Further, this Court's Order  
13 dated October 5, 2015, dismissed this claim for relief with prejudice to the extent it has been  
14 asserted against the Trust.

15           202. Defendants deny the allegations in this Paragraph. Further, this Court's Order  
16 dated October 5, 2015, dismissed this claim for relief with prejudice to the extent it has been  
17 asserted against the Trust.

18        203. Defendants deny the allegations in this Paragraph. Further, this Court's Order  
19 dated October 5, 2015, dismissed this claim for relief with prejudice to the extent it has been  
20 asserted against the Trust.

21        204. Defendants deny the allegations in this Paragraph. Further, this Court's Order  
22 dated October 5, 2015, dismissed this claim for relief with prejudice to the extent it has been  
23 asserted against the Trust.

## **NINTH CLAIM FOR RELIEF**

25        205. Defendants repeat and incorporate by reference their responses to the foregoing  
26 paragraphs herein.

27        206. This Paragraph contains conclusions of law and not factual statements for which  
28 any response is required. To the extent that any further response is required, the allegations in

1 this Paragraph are denied.

2 207. Defendants admit that the Advisor serves as the investment adviser and  
 3 administrator of Schwab Investments. Defendants assert that the Investment Advisory and  
 4 Administrative Agreement speaks for itself. The remaining allegations in this Paragraph do not  
 5 contain factual statements for which any response is required. To the extent that any further  
 6 response is required, the remaining allegations in this Paragraph are denied.

7 208. To the extent this Paragraph purports to quote from the IAA, it speaks for itself  
 8 and the Court is referred to that document for a complete and accurate statement of its contents.  
 9 The remaining allegations in this Paragraph do not contain factual statements for which any  
 10 response is required. To the extent that any further response is required, the remaining allegations  
 11 in this Paragraph are denied.

12 209. To the extent this Paragraph purports to quote from the IAA, it speaks for itself  
 13 and the Court is referred to that document for a complete and accurate statement of its contents.  
 14 The remaining allegations in this Paragraph are conclusions of law and not factual statements for  
 15 which any response is required. To the extent that any further response is required, the remaining  
 16 allegations in this Paragraph are denied.

17 210. This Paragraph contains conclusions of law and not factual statements for which  
 18 any response is required. To the extent that any further response is required, Defendants lack  
 19 sufficient knowledge to form an opinion as to the truth of the allegations in this Paragraph, and  
 20 therefore deny the allegations.

21 211. This Paragraph contains conclusions of law and not factual statements for which  
 22 any response is required. To the extent that any further response is required, the allegations in  
 23 this Paragraph are denied.

24 212. Defendants deny the allegations in this Paragraph.

25 213. Defendants deny the allegations in this Paragraph.

26 214. Defendants deny the allegations in this Paragraph.

27 215. Defendants deny the allegations in this Paragraph.

28

## **TENTH CLAIM FOR RELIEF**

216. Defendants repeat and incorporate by reference their responses to the foregoing paragraphs herein.

217. This Paragraph contains conclusions of law and not factual statements for which any response is required. To the extent that any further response is required, the allegations in this Paragraph are denied.

218. Defendants deny the allegations in this Paragraph.

219. Defendants deny the allegations in this Paragraph.

220. Defendants deny the allegations in this Paragraph.

221. Defendants deny the allegations in this Paragraph.

## **ELEVENTH CLAIM FOR RELIEF**

222. Defendants repeat and incorporate by reference their responses to the foregoing paragraphs herein.

223. This Paragraph contains conclusions of law and not factual statements for which any response is required. To the extent that any further response is required, the allegations in this Paragraph are denied.

224. Defendants deny the allegations in this Paragraph.

225. Defendants deny the allegations in this Paragraph.

226. Defendants deny the allegations in this Paragraph.

227. Defendants deny the allegations in this Paragraph.

## **TWELFTH CLAIM FOR RELIEF**

228. Defendants repeat and incorporate by reference their responses to the foregoing paragraphs herein. Moreover, this Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice. Accordingly, no response is required. To the extent a response is required, the allegations in this Paragraph are denied.

229. This Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice. Accordingly, no response is required. To the extent a response is required, the allegations in this Paragraph are denied.

1           230. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
 2 prejudice. Accordingly, no response is required. To the extent a response is required, the  
 3 allegations in this Paragraph are denied.

4           231. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
 5 prejudice. Accordingly, no response is required. To the extent a response is required, the  
 6 allegations in this Paragraph are denied.

7           232. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
 8 prejudice. Accordingly, no response is required. To the extent a response is required, the  
 9 allegations in this Paragraph are denied.

10          233. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
 11 prejudice. Accordingly, no response is required. To the extent a response is required, the  
 12 allegations in this Paragraph are denied.

13          234. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
 14 prejudice. Accordingly, no response is required. To the extent a response is required, the  
 15 allegations in this Paragraph are denied.

16          235. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
 17 prejudice. Accordingly, no response is required. To the extent a response is required, the  
 18 allegations in this Paragraph are denied.

19          236. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
 20 prejudice. Accordingly, no response is required. To the extent a response is required, the  
 21 allegations in this Paragraph are denied.

22          237. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
 23 prejudice. Accordingly, no response is required. To the extent a response is required, the  
 24 allegations in this Paragraph are denied.

25          238. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
 26 prejudice. Accordingly, no response is required. To the extent a response is required, the  
 27 allegations in this Paragraph are denied.

28          239. This Court's Order dated October 5, 2015, dismissed this claim for relief with

1 prejudice. Accordingly, no response is required. To the extent a response is required, the  
 2 allegations in this Paragraph are denied.

3 240. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
 4 prejudice. Accordingly, no response is required. To the extent a response is required, the  
 5 allegations in this Paragraph are denied.

6 241. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
 7 prejudice. Accordingly, no response is required. To the extent a response is required, the  
 8 allegations in this Paragraph are denied.

9 242. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
 10 prejudice. Accordingly, no response is required. To the extent a response is required, the  
 11 allegations in this Paragraph are denied.

12 243. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
 13 prejudice. Accordingly, no response is required. To the extent a response is required, the  
 14 allegations in this Paragraph are denied.

15 244. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
 16 prejudice. Accordingly, no response is required. To the extent a response is required, the  
 17 allegations in this Paragraph are denied.

18 245. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
 19 prejudice. Accordingly, no response is required. To the extent a response is required, the  
 20 allegations in this Paragraph are denied.

21 246. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
 22 prejudice. Accordingly, no response is required. To the extent a response is required, the  
 23 allegations in this Paragraph are denied.

24 **THIRTEENTH CLAIM FOR RELIEF**

25 247. Defendants repeat and incorporate by reference their responses to the foregoing  
 26 paragraphs herein. Moreover, this Court's Order dated October 5, 2015, dismissed this claim for  
 27 relief with prejudice. Accordingly, no response is required. To the extent a response is required,  
 28 the allegations in this Paragraph are denied.

1       248. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
2 prejudice. Accordingly, no response is required. To the extent a response is required, the  
3 allegations in this Paragraph are denied.

4       249. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
5 prejudice. Accordingly, no response is required. To the extent a response is required, the  
6 allegations in this Paragraph are denied.

7       250. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
8 prejudice. Accordingly, no response is required. To the extent a response is required, the  
9 allegations in this Paragraph are denied.

10       251. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
11 prejudice. Accordingly, no response is required. To the extent a response is required, the  
12 allegations in this Paragraph are denied.

13       252. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
14 prejudice. Accordingly, no response is required. To the extent a response is required, the  
15 allegations in this Paragraph are denied.

16       253. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
17 prejudice. Accordingly, no response is required. To the extent a response is required, the  
18 allegations in this Paragraph are denied.

19       254. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
20 prejudice. Accordingly, no response is required. To the extent a response is required, the  
21 allegations in this Paragraph are denied.

22       255. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
23 prejudice. Accordingly, no response is required. To the extent a response is required, the  
24 allegations in this Paragraph are denied.

25       256. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
26 prejudice. Accordingly, no response is required. To the extent a response is required, the  
27 allegations in this Paragraph are denied.

28       257. This Court's Order dated October 5, 2015, dismissed this claim for relief with

1 prejudice. Accordingly, no response is required. To the extent a response is required, the  
 2 allegations in this Paragraph are denied.

3 258. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
 4 prejudice. Accordingly, no response is required. To the extent a response is required, the  
 5 allegations in this Paragraph are denied.

6 259. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
 7 prejudice. Accordingly, no response is required. To the extent a response is required, the  
 8 allegations in this Paragraph are denied.

9 **FOURTEENTH CLAIM FOR RELIEF**

10 260. Defendants repeat and incorporate by reference their responses to the foregoing  
 11 paragraphs herein. Moreover, this Court's Order dated October 5, 2015, dismissed this claim for  
 12 relief with prejudice. Accordingly, no response is required. To the extent a response is required,  
 13 the allegations in this Paragraph are denied.

14 261. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
 15 prejudice. Accordingly, no response is required. To the extent a response is required, the  
 16 allegations in this Paragraph are denied.

17 262. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
 18 prejudice. Accordingly, no response is required. To the extent a response is required, the  
 19 allegations in this Paragraph are denied.

20 263. This Court's Order dated October 5, 2015, dismissed this claim for relief with  
 21 prejudice. Accordingly, no response is required. To the extent a response is required, the  
 22 allegations in this Paragraph are denied.

23

24 **AFFIRMATIVE DEFENSES**

25 Defendants assert the following affirmative defenses to the First, Second, Third, Fourth,  
 26 Eighth, Ninth, Tenth, and Eleventh Causes of Action (the "Remaining Claims") in the Complaint.  
 27 Every other cause of action in the Fourth Amended Complaint was dismissed with prejudice in  
 28 this Court's October 5, 2015, Order. Defendants reserve the right to modify, clarify, amend, or

supplement these affirmative defenses, as may be appropriate at a later time.

## **First Affirmative Defense**

The Remaining Claims are precluded by the Securities Litigation Uniform Standards Act (SLUSA).

## **Second Affirmative Defense**

The Remaining Claims fail to state a claim upon which relief may be granted.

### **Third Affirmative Defense**

The Remaining Claims are barred by the applicable Statute of Limitations under Massachusetts law or any other applicable law.

#### **Fourth Affirmative Defense**

The Remaining Claims are barred because Plaintiff and the putative class members have not suffered any injury. In the alternative, any claimed damages are speculative and thus are not recoverable.

## **Fifth Affirmative Defense**

The Remaining Claims are barred because Plaintiff, and the putative class members, have already received compensation for the harms alleged herein and such prior compensation must off-set any potential recovery here.

## **Sixth Affirmative Defense**

The Remaining Claims are not properly maintained as a class action.

## **Seventh Affirmative Defense**

The Remaining Claims are barred, in whole or in part, by laches, equitable estoppel, waiver, or other related equitable doctrines.

## **Eighth Affirmative Defense**

Plaintiff lacked standing to file this lawsuit, rendering all amended complaints (including the Fourth Amended Complaint) null and void.

## **Ninth Affirmative Defense**

Plaintiff lacks standing because the Remaining Claims are derivative claims that belong to the Trust, if anyone, and Plaintiff has failed to satisfy the statutory pre-requisites for asserting a

1 derivative claim.

2 **Tenth Affirmative Defense**

3 The Remaining Claims are barred because at all relevant times the Defendants relied upon  
4 information, opinions, reports or records presented by or prepared by other persons as to matters  
5 which the Trustees reasonably believe to be within such person's professional or expert  
6 competence.

7 **Eleventh Affirmative Defense**

8 Claims One and Eight are barred because the Trustees are protected by an exculpatory  
9 clause in the Declaration of Trust.

10 **Twelfth Affirmative Defense**

11 Claims Three, Four, Nine, and Ten are barred because aiding and abetting claims cannot  
12 be maintained in the absence of any underlying claims for relief.

13 **Thirteenth Affirmative Defense**

14 Plaintiff and the putative class have failed to mitigate their damages.

15 **Fourteenth Affirmative Defense**

16 The Court lacks subject matter jurisdiction over the Remaining Claims.

18 **PRAYER**

19 WHEREFORE the Defendants pray as follows:

20 1. Judgment be entered in favor of the Defendants;  
21 2. Plaintiffs' prayer for class certification, appointment of class counsel,  
22 compensatory damages, disgorgement, injunctive relief, attorneys' costs and expenses,  
23 recessionary damages, exemplary damages, punitive damages, and other equitable relief be  
24 denied.

1 Dated: October 13, 2015

Respectfully Submitted,

2 DECHERT LLP

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